CURRENT DECISIONS

CONTRACTS—INFORMATION AS VALUABLE CONSIDERATION.—The defendant, in consideration of the plaintiff's promise to impart certain valuable information which would increase the profits of the defendant's product, promised to pay to the plaintiff one-half of the profits accruing therefrom. The information was to the effect that the profits would be increased by an increase in the selling price of the product. The defendant followed this advice with a resulting increase in profits, but refused to conform to his agreement, and the plaintiff sued for breach of contract. *Held,* that this information was no consideration. *Soule v. Bon Ami Co.* (1922, N. Y.) 201 App. Div. 794.

The question of the sufficiency or value of "information" as consideration is one which has rarely been adjudicated. The information given by the plaintiff was of actual value, and was accepted as consideration by the defendant. The court based its decision on the ground that the information given was not new or original, and therefore not valuable or sufficient as consideration. It appeared, however, that the plaintiff had learned from actual experience in relation to a similar business that prices could be increased in the face of keen competition without affecting the sales. The peculiar result obtained is undoubtedly caused by the unusual character of the consideration. This case lends support to a doubtful Connecticut decision which has hitherto stood alone. *Masline v. New York, N. H. & H. Ry.* (1921) 95 Conn. 702, 112 Atl. 639.

CRIMINAL LAW—APPEAL BY STATE—NO RIGHT TO A RETRIAL.—In a prosecution for larceny, the trial court directed a verdict for the accused. The state appealed on the ground that the verdict was against the evidence. A statute provided that "if the appeal be taken by the State, the Supreme court cannot reverse the judgment, or modify it so as to increase the punishment, but may affirm it, and shall point out any error in the proceedings, ... and its decision shall be obligatory on the District Court, as the correct exposition of the law." Iowa Code, 1913, sec. 5463. *Held,* that, although the trial court erred in directing a verdict, there could be no retrial. *State v. Kelley* (1922, Iowa) 186 N. W. 834.

In the absence of statute the state usually has no right to an appeal in criminal cases. An appeal by the state has always been regarded as violating the principle of double jeopardy. *Ex parte Bornee* (1915) 76 W. Va. 360, 85 S. E. 529. In Pennsylvania, however, even in the absence of statute, writs of error by the state have been allowed from an early period. *Commonwealth v. Wallace* (1886) 114 Pa. 405, 6 Atl. 685. And in Louisiana the state can appeal in criminal cases when judgment for the state has been arrested. *State v. Brabson* (1886) 38 La. Ann. 144. Statutes conferring upon the state the power to appeal have been enacted in several jurisdictions, but they either expressly or by construction do not permit the prosecution of a new trial after acquittal. *State v. Haller* (1915) 119 Ark. 503, 177 S. W. 1138; see 19 L. R. A. 346, note; *contra, State v. Lee* (1894) 65 Conn. 265, 30 Atl. 1110; *State v. Felch* (1918) 92 Vt. 477, 105 Atl. 23. Where a provision against double jeopardy exists in state constitutions, statutes granting a new trial at the instance of the state are invalid. See (1919) 28 YALE LAW JOURNAL, 408; L. R. A. 1915F, 1093 note.

EVIDENCE—PRIVILEGED COMMUNICATION—WAIVER BY PATIENT.—In a personal injury action the plaintiff called certain physicians as witnesses, and furthermore she herself testified as to the nature of her injuries. When the defendant sought

to call another physician who had attended her, the plaintiff objected to all questions concerning their professional relationship on the ground that it was privileged by statute. N. Y. C. C. P. sec. 834, C. P. A. sec. 352. *Held,* that the evidence was admissible. *Hethier v. Johns* (1922) 233 N. Y. 370, 135 N. E. 603.

In New York a patient is privileged by statute to exclude the evidence of any physician who has served in a professional capacity. Ignoring the fact that the plaintiff here introduced a physician's testimony, the instant case proceeds on the broad basis that the personal testimony of a patient is of itself sufficient to waive the privilege conferred by the statute. While this view has been urged by text writers, courts have until now conceded it only in cases of malpractice. 4 Wigmore, *Evidence* (1905) sec. 2389; *Capron v. Douglass* (1908) 193 N. Y. 11, 85 N. E. 827. In the ordinary injury cases the authorities are almost unanimously *contra. Fox v. Union Turnpike Co.* (1901, N. Y.) 59 App. Div. 363; *Green v. Nebagamain* (1902) 113 Wis. 508, 89 N. W. 520. It is to be hoped that this decision anticipates the rejection of a rather illogical rule. For discussions of the instant case in the lower court, see COMMENTS (1922) 7 CORN. L. QUART. 377; COMMENTS (1922) 31 YALE LAW JOURNAL, 529.

INSURANCE—DOUBLE INDEMNITY ACCIDENT CLAUSE—ENGAGEMENT IN MILITARY SERVICE IN TIME OF WAR.—An insurance policy contained a clause granting double indemnity in event of the insured's death through external, violent, and accidental means, excepting death as a result of military or naval service in time of war. The insured, an enlisted man in the United States Army, was accidentally killed while riding on a troop train in this country on June 27, 1919, the United States still being in a technical state of war with Germany. *Held,* that the plaintiff could not recover the added indemnity. *Mutual Life Ins. Co. v. Johnson* (1922, Ga.) 110 S. E. 910.

Forfeiture clauses of this type have been construed by the courts in at least seventeen cases since the war. In most instances it has been held that the fact that the insured was a member of the armed forces of the United States at the time of his death was sufficient to bar a recovery. *Bradshaw v. Farmers' and Bankers' Ins. Co.* (1920) 107 Kan. 681, 193 Pac. 332; *McQueen v. Sovereign Camp W. O. W.* (1921, S. C.) 106 S. E. 32; *Field v. Life Ins. Co.* (1921, Tex. *Civ. App.*) 227 S. W. 530; *Nowlan v. Guardian Life Ins. Co.* (1921) 88 W. Va. 563, 107 S. E. 177; *Mattox v. New England Mut. Life Ins. Co.* (1920, Ga. App.) 103 S. E. 180; *Slaughter v. Protective League Ins. Co.* (1920) 205 Mo. App. 352, 223 S. W. 819; *Reid v. Am. Nat. Assur. Co.* (1920) 204 Mo. App. 643, 218 S. W. 957; *Miller v. Ill. Bank Life Ass. Co.* (1919) 138 Ark. 422, 212 S. W. 310. In direct conflict with this construction, other courts have held that connection with actual combat was necessary. *Myli v. Am. Life Ins. Co.* (1919, N. D.) 175 N. W. 631; *Redd v. Am. Life Ins. Co.* (1919) 200 Mo. App. 383, 207 S. W. 74; *Malone v. State Ins. Co.* (1919) 202 Mo. App. 499, 213 S. W. 877; *Nutt v. Security Life Ins. Co.* (1920) 142 Ark. 29, 218 S. W. 675; *Benham Adm. v. Am. Cent. Life Ins. Co.* (1919) 140 Ark. 612, 217 S. W. 462; *Kelly v. Fidelity Mut. Life Ins. Co.* (1919) 169 Wis. 274, 172 N. W. 152; *Boatwright v. Am. Life Ins. Co.* (1920, Iowa) 180 N. W. 321; *Long v. Jos. Ins. Co.* (1920, Mo.) 225 S. W. 106.